



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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January 28, 2010

County Clerk/Registrar of Voters (CC/ROV) Memorandum #10042

TO: All County Clerks/Registrars of Voters

FROM:

Cathy Mitchell
Chief of Elections

RE: Military and Overseas Voter Empowerment Act (MOVE)

The Military and Overseas Voter Empowerment (MOVE) Act was signed into law by President Obama on October 28, 2009, as part of the National Defense Authorization Act of FY 2010 (P.L. 111-84). The MOVE Act makes changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, and provides that a state may delegate responsibilities to jurisdictions within the state. These changes will be in effect for the **November 2010 General Election** and each succeeding election for federal office.

Our review of the Act concludes that because California state law meets or exceeds the MOVE Act in virtually every area, the Secretary of State's office (SOS) and local elections officials will only have to make minimal adjustments in their current practices.

Specifically, the MOVE Act requires states or local elections officials that have been delegated to carry out these requirements to:

- Establish procedures that allow UOCAVA voters to request voter registration applications and absentee ballot applications by mail *or electronically* for general, special, primary, and runoff elections for federal office. The procedures must include a means for the voter to designate whether they want to receive the application by mail or electronically.

The SOS has confirmed with the Federal Voting Assistance Program (FVAP) that faxing qualifies as "electronic transmission" at this time. Other acceptable means of electronic communication for making voter registration/absentee ballot applications and blank absentee ballots available to military and overseas voters include scanning and emailing the materials, and web-based methods, such as allowing voters to download applications and/or ballots directly from the Internet. California law already allows UOCAVA voters to electronically request ballots for all elections.

- Transmit the voter registration application or absentee ballot application based on the preference selected by the voter. If the voter does not indicate a preference, the application must be delivered by any delivery method allowable in accordance with applicable state law or, if there is no applicable state law, by mail.

Since California law does not designate a specific method of transmission, the absentee ballot should be sent by mail if the voter does not indicate a preference.

- Protect throughout the transmission process, to the extent practicable, the security of the voter registration and absentee ballot application request, and protect the privacy of the identity and personal data of the voter who requests or is sent a voter registration application or absentee ballot application.

California law and local elections officials' practices routinely aim to maintain the confidentiality of all voter registration and personal identification information.

- Designate at least one means of electronic communication for UOCAVA voters to request, and for states to send, voter registration applications, absentee ballot applications, and voting information. The designated means of electronic communication must be included on all information and instructional materials that accompany balloting materials sent to UOCAVA voters.

California Elections Code section 3103 allows for electronic transmission of voter registration applications, absentee ballot applications, and voting information. It is the Secretary of State office's understanding that counties with special absentee voters already have established procedures to transmit this material to their UOCAVA voters.

- Develop procedures for transmitting blank ballots to UOCAVA voters by mail and electronically for general, special, primary, and runoff elections for federal office. The procedures must allow voters to designate whether they want to receive the blank ballot by mail or electronically. The state must transmit the ballot based on the preference selected by the voter. If the voter does not indicate a preference, the ballot must be delivered by mail.

California Elections Code section 3103(b) allows counties to provide special absentee voters with a special absentee ballot along with a list of measures and candidates that the UOCAVA voter is entitled to vote on.

- Work with local jurisdictions to develop a free access system that allows UOCAVA voters to determine whether their marked absentee ballots were received by the appropriate elections official.

Federal law requires county elections officials to maintain a similar system for people who cast provisional ballots and California Elections Code section 3017(c) requires county elections officials to provide such a system to any Californian who casts a vote-by-mail ballot. County elections officials should determine if their existing system(s) can be modified to provide this same service to UOCAVA voters if it is not already provided to these voters.

- Accept the special absentee ballot application as a ballot request at least for all federal elections in the calendar year in which it was submitted.

California Elections Code section 3100 exceeds the MOVE Act requirement by specifically requiring that anyone who registers as a UOCAVA voter shall be deemed a permanent absentee voter.

- Transmit a requested absentee ballot to the UOCAVA voter not later than 45 days before an election for federal office if an absentee ballot request is received at least 45 days before the election. If the request is received less than 45 days before an election for federal office, the MOVE Act requires that the absentee ballot be sent in accordance with state law and in a manner that expedites the transmission of the ballot.

California Elections Code section 3103 exceeds the MOVE Act requirement by specifically requiring the county elections official to send the special absentee ballot with a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures on which the voter is qualified to vote.

If a special election is called to fill a federal office vacancy, and the state will be unable to meet the 45-day transmittal requirement imposed by the MOVE Act, the MOVE Act requires the SOS to request a hardship exemption. The SOS also must submit a plan to ensure that UOCAVA voters are able to receive absentee ballots and submit marked ballots to the appropriate elections official in time to have them counted.

- Work with the Election Assistance Commission (EAC) and the FVAP to develop standards for reporting on the number of ballots transmitted and received and other data as the EAC determines appropriate.

The SOS will continue to work with the EAC and the FVAP to prevent duplicative survey requests.

While not specifically required by the MOVE Act, for reporting purposes, you must distinguish UOCAVA voter ballot data from regular vote-by-mail ballot data, and record in separate categories domestic military, overseas military, and overseas citizens' ballots sent and received. The SOS will notify you as soon as any new or additional reporting requirements are established.

- Accept voter registration and absentee ballot applications, marked absentee ballots, and Federal Write-In Absentee Ballots (FWAB) that fail to meet notarization requirements, restrictions on paper type (including weight and size), or restrictions on envelope type (including weight and size).

California law does not impose any notarization requirements or restrictions on paper type or envelope type that a voter must comply with relative to these requests or submissions.

- Accept the FWAB for all special, primary, and runoff elections for federal office.

While not required by California law, local elections officials have customarily complied with this now mandatory requirement that will go into effect on December 31, 2010.

Should you need assistance implementing this new federal legislation, please contact Jane Howell at jane.howell@sos.ca.gov or (916) 653-2744. Thank you.